

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of
CALIFORNIA-AMERICAN WATER
SERVICE COMPANY (U 210 W) for an
order authorizing it to increase its rates for
water service in its Los Angeles District to
increase revenues by \$2,020,466 or 10.88% in
the year 2007; \$634,659 or 3.08% in the year
2008; and \$666,422 or 3.14% in the year
2009.

A.06-01-005
(Filed January 9, 2006)

**RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES
TO MOTION OF CAL-AM TO BIFURCATE PROCEEDING**

April 21, 2006

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I. INTRODUCTION

Pursuant to Rule 45(f) of the Rules of Practice and Procedure of the California Public Utilities Commission (CPUC or the Commission), and the “Administrative Law Judge’s Ruling Regarding California-American Water Company’s April 10, 2006 Motion to Bifurcate Proceeding” issued on April 13, 2006 (4/13/06 ALJ Ruling), the Division of Ratepayer Advocates (DRA), hereby submits its Response to California-American Water Company’s (Cal-Am’s) Motion and Supplemental Filing.¹

¹ Motion of California-American Water Company (U 210 W) to Bifurcate Proceeding to Consider Rate Design on Separate Schedule (April 10, 2006) (Motion); Supplemental Filing of California-American Water Company (U 210 W) In Compliance With Ruling of Administrative Law Judge Walwyn (April 17, 2006) (Supplemental Filing).

DRA does not oppose Cal-Am's request to consider a new tiered rate design in lieu of Cal-Am's original request to consolidate rates across the three subsystems in Cal-Am's Los Angeles District. Because DRA and other Intervenor (such as the City of Duarte and the City of San Marino) will need additional time to analyze a tiered rate alternative and engage in negotiations, DRA supports addressing all rate design issues (including Special Request # 2) in a second phase of this proceeding according to the schedule proposed herein.

II. SUMMARY OF ISSUES

The issues raised by Cal-Am's Motion, Cal-Am's Supplemental Filing, and the 4/13/06 ALJ Ruling are:

- Should Cal-Am be allowed to withdraw its rate consolidation request and submit a proposal for increasing quantity block rates (or "tiered rates")?
- If so, should the proceeding be bifurcated so that revenue requirement issues are considered in a first phase and rate design issues are considered in a second phase (as proposed by Cal-Am), taking into account when rates could be implemented if the proceeding is not bifurcated, the inefficiency of having two phases, and the sufficiency of customer notice?
- If the proceeding is bifurcated, what are the specific "rate design issues" that are appropriate for a second phase, what schedule should be adopted, and what rates should be in effect for what periods of time?

As discussed below, DRA recommends that the Commission:

- Strike Cal-Am's rate consolidation proposal (Special Request #3) from its Application;
- Bifurcate the proceeding to address a potential tiered rate structure in conjunction with Cal-Am's request for a conservation rate design and Water Revenue Adjustment Mechanism (WRAM) (Special Request # 2);
- Extend the phase two schedule that Cal-Am proposes to allow for the complexity of the issues, settlement discussions among all parties, and DRA's resource constraints, and;

- Allow rates based on the utility's current rate design to go into effect on 1/1/07, as requested by Cal-Am. If and when a new rate structure is adopted, final rates should only go into effect after adoption, without retroactivity back to 1/1/07, to minimize customer confusion.

III. DRA SUPPORTS WITHDRAWAL OF CAL-AM'S RATE CONSOLIDATION PROPOSAL

During the Public Participation Hearings on April 5th and 6th, Cal-Am clearly expressed an intention to withdraw its rate consolidation proposal, which is Special Request No. 3 in Cal-Am's Application.² The Motion proposes bifurcation to address "rate design issues" in a later phase, but does not explicitly seek Commission approval to withdraw Special Request No. 3. DRA staff has been reviewing Special Request No. 3 in anticipation of addressing the issue in testimony to be filed on May 3rd. It should be clear to the parties, however, what issues and proposals are before the Commission to ensure due process. DRA therefore urges the Commission to strike Special Request No. 3 as clarification that parties need not address the issue in testimony.

IV. BIFURCATION IS APPROPRIATE IN LIGHT OF THE ADDITIONAL TIME NEEDED TO ADDRESS A NEW RATE DESIGN PROPOSAL

Although DRA does not take a position at this time on the appropriateness of a tiered rate structure, DRA does not oppose consideration of a new tiered rate proposal.³ As discussed in detail below, however, consideration of a new tiered rate proposal, including time for discussions among interested parties, is not possible within Cal-Am's proposed schedule for phase two.⁴ The schedule for rate design issues must therefore be pushed out.⁵ Despite the inefficiency of having two phases, however, resolution of the

² Special Request # 3 seeks adoption of "consistent rates across the Los Angeles District." Application at 7; Appendix A, Ch. 13, Sec. 1, at 3.

³ DRA's support for bifurcation should not be construed as support for the concept of a tiered rate structure in this case. DRA will review the issue on the merits after Cal-Am submits its new rate design proposal.

⁴ For Cal-Am's proposed schedule, see Motion at 6.

⁵ See DRA's proposed schedule in Section VII.

revenue requirement issues should not be delayed. In addition, CalAm's requests for a WRAM and for a change in the amount of fixed costs recovered and a customer charge are rate design issues, and therefore also belong in phase two. Finally, while DRA is concerned about any violations of customer notice requirements, DRA recommends in these limited circumstances that the revenue requirement phase of this proceeding go forward on the current schedule, and that Cal-Am issue, in conjunction with its new rate design proposal, additional customer notices that both reflect the new proposal and comply with the Commission's notice requirements in their entirety.⁶

A. Consideration Of A New Tiered Rate Proposal (And Related Issues) Cannot Be Completed Within Cal-Am's Proposed Phase 2 Schedule

The concept of a permanent increasing block rate design for water utilities is a new issue for the current Commission. DRA is in the midst of developing such a rate design with California Water Service Company (CWS), and is finding the process to be both time-consuming and complicated.⁷ DRA does not oppose considering it in the context of Cal-Am's Los Angeles District,⁸ but emphasizes that Cal-Am's proposed schedule to consider a new rate design is inadequate for the needs of DRA,⁹ and likely for the needs of other parties based on comments made during the Public Participation

⁶ As discussed below, Cal-Am did not comply with one element of Rule 24 and PU Code § 454(a) by issuing customer notices that failed to include the total amount of its requested rate increase in percentage and dollar amounts.

⁷ As reflected in a Joint Motion and WRAM Stipulation submitted by DRA and CWS in A.05-08-007, DRA and CWS are attempting to reach agreement on both WRAM and tiered rates through informal processes. Joint Motion of California Water Service Company and the Division of Ratepayer Advocates To Approve a Stipulation Concerning the Water Revenue Adjustment Mechanism (WRAM) and a Stipulation Regarding Remaining Issues (March 9, 2006) (DRA/CWS Joint Motion); *see also* Attachment A to DRA/CWS Joint Motion titled "Revenue Adjustment Mechanism Agreement" (WRAM Stipulation).

⁸ In the Joint Motion and WRAM Stipulation filed in A.05-08-006, DRA agreed to adopt tiered rates. DRA notes that in this case, DRA is agreeing to consider the adoption of tiered rates.

⁹ Cal-Am proposes a bifurcated schedule in which DRA and Intervenors would submit its report on rate design issues a little over 5 weeks after Cal-Am files its formal proposal (from May 3 to June 9). Motion at 6.

Hearings. If the Commission accepts Cal-Am's request to submit a new rate design proposal at this late date, Cal-Am should be willing to adopt a schedule that accommodates the complexity of the issues, the need for full participation of Intervenor like the City of San Marino and the City of Duarte, and the other obligations of key DRA staff.

Cal-Am itself observes that "revising or developing alternative rate designs is complex and labor intensive."¹⁰ Statements in the WRAM Stipulation filed by DRA and CWS support this view:

The Parties agree that implementation of the proposed RAM and accompanying increasing block rates is a novel situation.¹¹ ...

With respect to the rate design criteria the Parties recognize that it may take time to perfect the transition from the current single block quantity rates to increasing quantity block rates that provide customers with the appropriate pricing signals. Moreover, the Parties are aware that the data needed to develop billing determinants by customer class may not be complete and have agreed to apply their best judgment where data is unavailable or incomplete.¹²

It is apparent from these statements that, after Cal-Am submits a new tiered rate proposal, DRA (and possibly Intervenor) will need time to send out data requests, receive responses, and analyze responses, a process that will likely have to be repeated for follow-up data requests. Furthermore, it appears that the City of Duarte and the City of San Marino are primarily concerned with these rate design issues and are already actively involved in discussing them with Cal-Am. Additional time should therefore be

¹⁰ Motion at 3.

¹¹ WRAM Stipulation at 1. While DRA and CWS note in the WRAM Stipulation that the agreement should "not be construed as a precedent or statement of policy of any kind except to the extent expressed within the Stipulation," DRA references language in the WRAM Stipulation for the limited proposition that the development of tiered rates and a WRAM are issues that are both new and complicated.

¹² WRAM Stipulation at 2.

allowed for multi-party settlement discussions¹³ in which Cal-Am has already expressed an interest:

California American Water stands behind its originally proposed rate design. At the same time, California American Water recognizes the concerns surrounding its original proposal and is very interested in and highly motivated to work with DRA, the Cities, and other affected parties to achieve a settlement on rate design that addresses the concerns of the Cities while still promoting conservation.¹⁴

Finally, evaluating a new tiered rate proposal will require an unanticipated shuffling of DRA resources. As discussed in Section IV.B, below, DRA staff have on-going obligations associated with other cases, most of which are submitted according to the Rate Case Plan.¹⁵ To accommodate consideration of a tiered Cal-Am rate proposal, while leveraging the experience being developed through negotiations on the issue with CWS, DRA recommends in Section VII a phase two schedule that would give Intervenor an opportunity to file testimony in September 2006.

B. Revenue Requirement Issues Should Not Be Delayed

The 4/13/06 ALJ Ruling seeks comment on “whether it would be more efficient, and address due process concerns raised at the PPHs, for the Commission to shift the entire proceeding to the new schedule proposed by Cal-Am on page 6 of its motion.”¹⁶ As discussed above, DRA does not believe that Cal-Am’s proposed schedule provides sufficient time for consideration of a new rate design proposal. To maximize efficiencies, one option is to delay the entire proceeding consistent with an extended schedule such as that proposed by DRA below.

¹³ At the time the WRAM Stipulation was filed in A.05-08-006, DRA and CWS anticipated that submitting a tiered rate design for single family residential customers within 30 days was feasible. WRAM Stipulation at 1. While only two parties are involved, DRA and CWS have not yet finalized that rate design.

¹⁴ Motion at 3.

¹⁵ D.04-06-018.

¹⁶ 4/13/06 ALJ Ruling at 3.

DRA believes that the efficiencies that would be gained by extending the entire schedule for the proceeding are outweighed by the need to resolve at least the revenue requirement issues in a timely fashion. Cal-Am expresses concern about otherwise adhering to the Rate Case Plan:

Because revising or developing alternative rate designs is complex and labor intensive, however, these negotiations [about rate design issues] may thwart the Rate Case Plan's mandate that Class A water utilities' GRCs be processed and rate increases be implemented in a timely manner. It would be improper, therefore, for the issue of rate design to delay either the timely processing of this application or the implementation of the approved rate increase on January 1, 2007.¹⁷

DRA also has concerns about deviating dramatically from the Rate Case Plan because of its own allocation of resources. Several DRA staff members assigned to this case continue to be engaged in extensive discovery and analyses of the revenue requirement issues in preparation for filing a report on May 3, 2006. Not only has DRA invested significant resources in what would be phase one of this proceeding under Cal-Am's proposal, DRA staff are assigned to water cases on a rotating basis governed primarily by the Rate Case Plan. If the responsibilities of several witnesses in this case are carried over into the next rate case cycle, the staffing of future rate cases by other Class A water companies will be impacted in a potential domino effect. DRA thus supports bifurcation of this proceeding so that revenue requirement issues are addressed in a timely manner according to the existing schedule.

C. When Cal-Am Submits Its New Rate Design Proposal, It Should Issue Customer Notices That Comply With Notice Requirements And Reflect The New Rate Design

The 4/13/06 ALJ Ruling raises a due process question relating to Cal-Am's full compliance with the customer notice requirements of Rule 24 (of the Commission's

¹⁷ Motion at 3.

Rules of Practice and Procedure)¹⁸ and Public Utilities Code § 454(a). The 4/13/06 ALJ Ruling observes that the “customer notices provided by Cal-Am ...do not include the overall revenue requirement increases being requested as a dollar and percentage amount.”¹⁹ The Ruling then requires Cal-Am to supplement its Application to address this issue, and invites comment on the appropriateness of delaying consideration of the entire case, in part to “address the due process concerns raised at the PPHs.”²⁰

Cal-Am acknowledges the deficiencies in its notices,²¹ but argues that its customer notice was effective in that it included “the impact of the proposed rate increase on the average residential customer in each of the three service areas in both dollar and percentage terms.”²² Cal-Am asserts that the omission did not harm ratepayers such that the Commission should waive the “procedural” requirement with which Cal-Am failed to comply.²³ Additionally, Cal-Am offers to issue compliant customer notices, presumably without deviating from the current schedule for addressing revenue requirement issues.²⁴

Under the limited circumstances of this case, DRA recommends proceeding with the revenue requirement issues on the current schedule, and requiring Cal-Am to send an additional set of customer notices when it submits its new proposal for tiered rates. While DRA is concerned about non-compliance with any customer notice requirements, the circumstances in this case, including the exigencies discussed above, merit a pragmatic solution. In particular, parties are over four months into this case, with Intervenor testimony due in less than two weeks. While DRA does not agree, as Cal-Am

¹⁸ Rule 24 and PU Code § 454(a) discuss the notice required when a utility files a rate increase application, including notice to customers. Rule 24 states, among other things, that such notice “shall state the amount of the proposed increase expressed in both dollar and percentage terms....” Section 454(a) states that such notice “shall state the amount of the proposed rate change expressed in both dollar and percentage terms for the entire rate change as well as for each customer classification....”

¹⁹ 4/13/06 ALJ Ruling at 2.

²⁰ 4/13/06 ALJ Ruling at 3.

²¹ See Supplemental Filing at 3.

²² Supplemental Filing at 3.

²³ See Supplemental Filing at 1.

²⁴ Supplemental Filing at 2.

argues, that “the total dollar amount of the requested rate increase across the entire Los Angeles District holds little or no meaning for most affected customers,”²⁵ DRA believes that it is reasonable to conclude that the information that was provided was “meaningful” to ratepayers.

Furthermore, regardless of the omission, Cal-Am should be required to send an additional set of customer notices when Cal-Am proposes another rate design. This offers an opportunity for Cal-Am to correct its earlier omission by providing all of the information necessary under Rule 24 and PU Code § 454(a). In developing the additional set of customer notices, however, it is vital that Cal-Am work with both DRA and the Public Advisor. For example, DRA notes that the new notices should likely include the estimated increases for the following usage patterns: winter median, winter average, annual median, annual average, and summer average.

Because Cal-Am’s dissemination of an additional set of customer notices can mitigate any harms that may result from the utility’s violation of Rule 24 and PU Code § 454(a), DRA recommends that the Commission allow the revenue requirement issues to be considered in a first phase consistent with the existing schedule, and then allow rate design issues to be addressed in a second phase consistent with DRA’s proposed schedule, below.

V. TIMING FOR IMPLEMENTING RATES

In addition to bifurcation of this proceeding, the Motion asks that “a final determination of the revenue requirement proceed on the current schedule with the approved rate increase based on the current rate design effective on January 1, 2007.”²⁶ DRA does not object to this proposal.

Cal-Am also proposes, however, that “the final rate design approved in this proceeding be applied to Los Angeles District customers retroactive to January 1,

²⁵ Supplemental Filing at 2. DRA does not agree with many of Cal-Am’s assertions on this issue, such as the claim that “[t]he omission of the total dollar amount of the proposed rate increase (in both dollar and percentage terms) was an insignificant and harmless omission.” Supplemental Filing at 3.

²⁶ Motion at 1 (emphasis added).

2007.”²⁷ DRA opposes this request. Cal-Am fails to provide any explanation or support for this proposal.²⁸ On the other hand, there are two obvious reasons for denying it. First, as both DRA and Cal-Am agree, a change in Cal-Am’s rate design should not require a change in its revenue requirement. In discussing reasons to support bifurcation, Cal-Am itself observes that “rate design is revenue neutral and any change in the revenue requirements for the districts would be minimal.”²⁹ As such, there should be no revenue or other need for Cal-Am to seek retroactive application of final rates based on a new rate design. Second, implementing a new set of rates on January 1, 2007 (based on the current rate design), and then another set of rates at some later point in 2007 (based on a newly adopted rate design) would generate significant customer confusion, with no discernible benefits. In sum, while Cal-Am has not articulated any benefits of making final rates retroactive back to January 1, 2007, the drawbacks, in the form of customer confusion, are evident.

VI. THE COMMISSION SHOULD CLARIFY THE ISSUES THAT WOULD BE ADDRESSED IN PHASE TWO

Cal-Am’s Motion repeatedly refers to bifurcation of “the rate design issue.” For example, the Motion states that “California American Water’s request to bifurcate this proceeding to consider the rate design issue on a separate schedule, while not delaying the timely implementation of the approved revenue requirement, is reasonable and supported by Commission precedent.”³⁰ DRA seeks clarification of the “rate design issues” that would be addressed if the proceeding is bifurcated.

In particular, DRA proposes that phase two address not only Cal-Am’s yet-to-be-filed tiered rate proposal, but also Special Request #2, including authority for a WRAM

²⁷ Motion at 1 (emphasis added).

²⁸ Furthermore, DRA strongly urges the Commission to disregard or strike any support for this request that Cal-Am may attempt to provide in reply to DRA’s Response. Unless DRA is offered an opportunity to respond to additional arguments by Cal-Am, Cal-Am should be held to the burden of making its case in its initial pleading, the Motion.

²⁹ Motion at 4.

³⁰ Motion at 4.

account. In Special Request # 2, Cal-Am seeks authorization for “a conservation rate design that will reduce the current monthly service surcharge and shift more of the recovery of fixed costs to the volumetric charge.”³¹ This request is clearly a rate design issue. Furthermore, in its more detailed description of Special Request # 2, Cal-Am states as follows:

As part of increasing its financial risk by exposing more of the recovery of costs to the up and down cycle of water sales, California American Water requests authority to track any such sales/revenue variances in a WRAM account.³²

Here, CalAm specifically links its request for a WRAM to its request to shift additional fixed cost recovery to the usage charge. Until such time as sales forecasts are able to account for how customer usage responds to a tiered rate design, tiered rates may also make revenue recovery more variable. Therefore, WRAM is also inextricably linked to the initially implementation of tiered rates. It makes little sense to consider and rule on a WRAM in phase one when the key issues that the utility may believe make a WRAM necessary will be considered in phase two.

VII. DRA’S PROPOSED SCHEDULE FOR BIFURCATION

DRA proposes the following schedule for a second phase of this proceeding. The only issues to be addressed are rate design issues as identified in Section VI.

May 3, 2006	Cal-Am Direct Testimony
Sept. 1, 2006	DRA and Intervenor Reply Testimony
Sept. 22, 2006	Cal-Am Rebuttal Testimony
Oct. 2-13, 2006	Settlement negotiations
Oct. 23-24, 2006	Evidentiary Hearings

³¹ Application at 7; Appendix A, Ch. 13, Sec. 1, at 2.

³² Appendix A, Ch. 13, Sec. 1, at 2.

Nov. 3, 2006	Opening Briefs
Nov. 9, 2006	Reply Briefs
Feb. 9, 2007	Proposed Decision
Feb. 23, 2007	Comments on Proposed Decision
Mar. 2, 2007	Reply Comments on Proposed Decision
March 2007	Commission Meeting

VIII. CONCLUSION

For the reasons set forth above, DRA recommends bifurcation of this proceeding such that revenue requirement issues are considered in a first phase, and rate design issues are considered in a second phase according to the schedule proposed herein.

Respectfully submitted,

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April 21, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document
**“RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES (DRA) TO
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Executed on April 21, 2006 at San Francisco, California.

NELLY SARMIENTO

N O T I C E

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